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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF GUAM**

UNITED STATES OF AMERICA, ) CRIMINAL CASE NO. 08-00018  
Plaintiff, )  
vs. )  
ERNESTO PAGLICAWAN VERDERA and ) UNITED STATES' MEMORANDUM  
MARK ANTHONY BARTOLOME, ) IN OPPOSITION TO DEFENDANT  
Defendants. ) BARTOLOME'S OBJECTION  
 ) TO PROPOSED REDACTION

Defendant Bartolome asserts that the proposed redaction of his oral statements to law enforcement agents will weaken his ability to present a defense. He claims that he will use the redacted statements which explain his relationship with co-defendant Verdera to confront the witnesses on cross-examination about alleged inaccuracies, and contends that the proposed redaction will in effect restrict his cross-examination.

His argument appears to be based on the rule of completeness. Fed.R.Evid. 106. When a proposed redaction is offered to avoid *Bruton* problems, Rule 106 is violated “only where admission of the statement in redacted form distorts its meaning or excludes information substantially exculpatory of the declarant,” United States v. Yousef, 327 F.3d 56, 154 (2d Cir.

1 2003). The rule of completeness applies only to written and recorded statements and does not  
2 apply to Bartolome's oral confession. United States v. Ortega, 203 F.3d 675, 682 (9<sup>th</sup> Cir. 2000).

3 Even if Rule 106 applied to oral conversations, the rule would not apply in this case. The  
4 redacted portions are not necessary to clarify or explain the unredacted portions, which are clear  
5 on their face and not undermined or changed by the exclusion of the redacted portions. The  
6 proposed redaction does not distort the meaning of the portions of the confession the government  
7 wishes to offer. As well, the proposed redaction does not omit any exculpatory evidence from  
8 jury consideration. Moreover, the government is permitted to offer portions of the defendant's  
9 statements as admissions of a party-opponent under Fed.R.Evid. 801(d)(2).

10 Although the Confrontation Clause guarantees Bartolome an "opportunity for effective  
11 cross-examination," it does not guarantee a "cross-examination that is effective in whatever way,  
12 and to whatever extent, the defense might wish." Delaware v. Fensterer, 474 U.S. 15, 20 (1985).  
13 A court may impose reasonable limits on cross-examination without violating the Confrontation  
14 Clause. Ortega, 208 F.3d at 682-83. For instance, in United States v. Castro, 813 F.2d 571, 576  
15 (2d Cir.), cert.denied, 484 U.S. 844 (1987), the court upheld a *Bruton* modification as not  
16 violating the rule of completeness even though arguably the modification led to considerably  
17 more distortion. In Castro the court allowed the admission of the inculpatory portion of  
18 Castro's statement in a joint trial, that "Castro knew where the cocaine was," but precluded the  
19 exculpatory part, that "[co-defendant] . . . put the cocaine in the bag" due to *Bruton* implications  
20 for the co-defendant. Id. at 575. If the rule of completeness is not violated by the exclusion of  
21 certain portions of Bartolome's statements to which he objects, then any reasonable limitation  
22 placed on cross-examination of government witnesses who will testify concerning Bartolome's  
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1 interview would be proper because the redacted portions Bartolome finds objectionable would  
2 not otherwise be admissible.

3 For the foregoing reasons, defendant Bartolome's objection to the proposed redaction  
4 should be overruled.

5 RESPECTFULLY submitted this 23<sup>rd</sup> day of June 2008.  
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10 By: /s/ Marivic P. David  
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